IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7920 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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KANU @ VIKKI RANCHHODBHAI PANCHOLI - Petitioner(s)
Versus
STATE OF GUAJRAT THR' SECRETARY (SPL) & 2 - Respondent(s)

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Appearance :
MS SADHANA SAGAR for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 30/08/2005

ORAL JUDGMENT

1. The order of detention dated 28.12.2004 passed by the Commissioner of Police, Surat City, exhibits failure of the existing police force in controlling crimes and even for petty offence of theft of mobile phones alleged to have been committed by the detenue, right to life and liberty as guaranteed under Article 21 of the Constitution of India, is curtailed by invoking drastic power conferred under

Subsection 1 of Section 3 of the Gujarat Prevention of Anti-social Activities Act (for short, the 'PASA'). That the spate of litigation followed under the detention law normally under PASA for curtailing bootlegging activities or criminal activities as dangerous person has now been used to prevent theft of mobile phones, according to the detaining authority, it disturbs the public order.

2. In the above mentioned back-drop the order of detention dated 28.12.2004 is challenged by the detenue on the ground that declaring the petitioner as dangerous person under Section 2(c) of the Act by the detaining authority is a case of total non application of miind in as much as the subjective satisfaction arrived at by the detaining authority to the effect that since various offences under Sections 397 and 114 of the Indian Penal Code have been registered against the detenue, he is required to be detained under the Act to prvent him from indulging into similar activities. That further challenge about satisfaction of the detaining authority that the detenue will prefer bail

application before the court, and on grant of bail application, further, will continue his similar illegal activities. Therefore, according to the learned advocate for the petitioner, while arriving at the conclusion in the backdrop of aforementioned facts subjective satisfaction of the detaining authority is vitiated and no relevant materials exist for passing the order of detention, has submitted that the representation dated 11.04.2005 was preferred by the detenue against the order dated 28.12.2004 remained undecided and she was not informed about the fate of the said representation. According to her, even there was substantial and unexplained delay of about one month in passing the order of detention and it has no proximity to the last mentioned alleged offence registered against the detenue. She has submitted that all the grounds which are independently and jointly sufficient to quash and set aside the order of detention on the basis of reported decision in 1997 (1) GLH 381, 22 GLR 1186 in the reported decision of Bai Amina Vs. State of Gujarat and Gujarat Current Decision (1992) 173 and 817. She has

further submitted that order of detention is illegal contrary to the provisions of Article 22(5) of the Constitution of India and required to be quashed and set aside, inasmuch as, it violates the sufficient selfguard given to the detenue for making effective representation.

3. The learned Assistant Government Pleader Mrs. Hansha B. Punani, has submitted that the representation dated 11.04.2005 submitted by the detenue was already decided on 16.04.2005 and was sent to the detenue as per the address mentioned in the order of detention. According to her the order of detention was based on sufficient material and it was passed after careful scrutiny, examination and consideration of various aspects before arriving at the subjective satisfaction. She has submitted that activities of the detenue are prejudicial to the public order inasmuch as looking to his antecedents the detenue has indulged into activities wherein on two occasions it has disturbed the public order. In this backdrop passing of the order of detention is just and

proper.

4. Considering the rival submissions of the parties, there is force in the submission of the learned advocate for the petitioner that registration of offences under Sections 379 and 114 of the Indian Penal Code pertaining to the theft of mobile phones on four different occasions cannot be said to be a prejudicial activities carried out by the detenue, which result into disturbance of the public order. It is evident that the averments in the affidavit in reply are to the effect that the detenue was indulging into offences as mentioned into the order of detention and such activities are prejudicial to the maintenance of the public order, are the usual recitals and no specific materials relied on by the authority concerned before arriving at the subjective satisfaction is diclosed. Accordig to the detaining authority the delay in passing the order of detention is caused due to some time taken by the Sponsoring Authority and proposal was received on 2.12.2004 after the cases were registered against the detenue.

5. The above mentioned averments clearly indicates that though the proposal was submitted on 2nd December, 2004 the order of detention was passed on 28.12.2004 and only event which has taken place is the calling upon the witnesses to the office on 27.12.2004. However, I am inclined to accept the submission of the learned advocate on the ground of order of detention which indicates and mentions about the disturbance of public order about the prejudicial activities of the detenue. That the concerned detaining authority has arrived at the subjective satisfaction of declaring the detenue as dangerous person under the Act on the basis of various F.I.R. registered qua the offence mentioned in the order of detention. That how such activities of theft of mobile phones are prejudicial to the public order, nothing has been disclosed or the relevant materials relied upon by the authority, to arrive at the subjective satisfaction, and, therefore, the order of detention is held to be illegal, contrary to law and required to be quashed and set aside.

6. The order of detention dated 28.12.2004 passed by the Police Commissioner, Surat City is hereby ordered to be quashed and set aside and the the detenue Kanu @ Vikki Ranchhodbhai Pancholi is ordered to be set at liberty forthwith, if he is not required in any other offence by any other authority.

7. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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